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International Convention the Elimination of All For... of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Concluding observations on the combined seventeenth to twenty-third periodic reports of Nepal*

1. The Committee considered the combined seventeenth to twenty-third periodic reports of Nepal (CERD/C/NPL/17-23), submitted in one document, at its 2626th and 2627th meetings (see CERD/C/SR.2626 and 2627), held on 30 April and 1 May 2018. At its 2639th meeting, held on 9 May 2018, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the seventeenth to twenty-third periodic reports of the State party, while regretting the delay of over eight years in their submission. The Committee expresses its appreciation for the open and constructive dialogue with the State party's delegation. The Committee wishes to thank the delegation for the information provided during the consideration of the report.

B. Positive aspects

3. The Committee welcomes the State party's ratification of or accession to:

(a) The Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict, in 2007, and on the sale of children, child prostitution and child pornography, in 2006;

(b) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, in 2007;

(c) The Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization (ILO), in 2007;

(d) The Convention on the Rights of Persons with Disabilities and its Optional Protocol, in 2010.

4. The Committee also welcomes the State party's efforts to amend its legislation, policies, programmes and administrative measures to further ensure the protection of human rights and the implementation of the Convention, including:

(a) The Constitution of Nepal (2015);

(b) The National Human Rights Commission Act (2012);

(c) The Caste-based Discrimination and Untouchability (Offence and Punishment) Act (2011);

* Adopted by the Committee at its ninety-fifth session (23 April–11 May 2018).

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(d) The National Human Rights Action Plan (2014–2019);

(e) The National Plan of Action against Human Trafficking (2011).

C. Concerns and recommendations

Domestic application of the Convention

5. The Committee is concerned by the absence of information concerning judicial cases in which the Convention has been expressly invoked and applied (arts. 1–2.)

6. **The Committee requests that the State party provide information on the number and type of cases in which judges have directly invoked the Convention.**

Definition and criminalization of racial discrimination

7. The Committee is concerned that the Caste-based Discrimination and Untouchability (Offence and Punishment) Act, 2011 does not prohibit discrimination based on colour or national or ethnic origin, and does not expressly prohibit both direct and indirect forms of discrimination (arts. 1–2 and 5).

8. **The Committee urges the State party to ensure that its domestic legislation defines and criminalizes all forms of racial discrimination specified in article 1 of the Convention, including discrimination on the basis of colour and national or ethnic origin, and prohibits both direct and indirect racial discrimination in all fields of public life.**

National human rights institutions

9. The Committee notes that the National Human Rights Commission has been granted A status by the Global Alliance of National Human Rights Institutions. However, the Committee is concerned by the fact that, in 2012 and 2013, only five caste-based discrimination complaints were presented to the Commission, and by the lack of clear and comprehensive information on the outcome of the review of those complaints. The Committee is further concerned that the National Inclusion Commission, the Madheshi Commission and the Tharu Commission are not yet operational, and that, due to insufficient funding, the National Dalit Commission is only operational in Kathmandu (art. 2).

10. **The Committee recommends that the State party, in line with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), provide sufficient resources to ensure the effective functioning of its national human rights institutions, and ensure the implementation of their recommendations. It requests that the State party provide in its next periodic report statistics indicating the number, type and outcome of complaints related to racial or caste-based discrimination and submitted to national human rights institutions and other bodies.**

Acts of racial discrimination

11. The Committee is concerned that complaints under the Caste-based Discrimination and Untouchability (Offence and Punishment) Act of 2011 can only be filed within three months of the alleged violations. While noting the delegation's statement that, during the period 2016–2017, the 659 caste-based discrimination complaints before the Supreme Court gave rise to 39 convictions, the Committee is concerned by the lack of detailed information on such cases, and by reports that the Act has not been effectively implemented. The Committee is also concerned by reports that law enforcement officials are reluctant to act *suo motu* upon caste-based discrimination and do not, upon receipt of related allegations, consistently file first information reports with a view to initiating criminal investigations (arts. 2 and 5–6).

12. **The Committee recommends that the State party:**

(a) Amend the Caste-based Discrimination and Untouchability (Offence and Punishment) Act of 2011 to extend the statute of limitations for submitting a complaint;

(b) Ensure that all criminal complaints of race-based discrimination are formally recorded by law enforcement through first information reports and that law enforcement officials who fail to do so are sanctioned;

(c) Ensure that acts of racial discrimination are consistently investigated, prosecuted and sanctioned, and that victims are provided with appropriate remedies;

(d) Widely disseminate information to the public throughout the country and to law enforcement officials about anti-racial discrimination laws and related complaint mechanisms.

Segregation

13. While noting that the State party has prohibited several practices of caste-based segregation, the Committee remains deeply concerned by reports that such segregation persists in practice, preventing marginalized castes, including Dalits, from safely marrying members of other castes, and from accessing places of worship, public spaces, public sources of food and water, educational facilities and housing facilities occupied by members of other castes (arts. 2–3 and 5).

14. **The Committee recommends that the State party:**

(a) Monitor, investigate, prosecute and sanction incidents of violence linked to intercaste marriage and caste-based segregation, and offer protection and remedies to victims;

(b) Conduct country-wide public awareness and education campaigns designed to eliminate the notion of racial or caste-based hierarchies, end social segregation practices and prevent intercaste violence;

(c) Ensure that educational curricula and textbooks condemn caste-based discrimination and untouchability, contain positive representations of the culture and contributions of all castes, and omit derogatory or otherwise discriminatory language against any caste.

Racist hate speech and hate crimes

15. The Committee is concerned by the lack of information on whether racial or caste-based hatred constitutes an aggravating factor in criminal sentencing. The Committee is also concerned by the lack of statistics and information on the incidence of racist or caste-based hate speech, and on measures taken to enforce relevant laws and sanction perpetrators. The Committee is further concerned by reports that the State party does not adequately monitor racist propaganda and organizations, and does not engage in systematic public awareness-raising efforts to eliminate notions of racial and caste-based hierarchies (arts. 2 and 4).

16. **Recalling its general recommendations No. 7 (1985) relating to the implementation of article 4 of the Convention and No. 35 (2013) on combating racist hate speech, the Committee recommends that the State party:**

(a) Ensure that racial and caste-based hatred constitute an aggravating circumstance when they serve as the motivation for an offence, both in law and in practice;

(b) Ensure that law enforcement officers properly identify, register, investigate, prosecute and sanction racist hate crimes, organizations and hate speech;

(c) Conduct awareness-raising programmes and dialogues throughout the country to eliminate caste-based and racial hatred and bias at the community level.

17. **The Committee requests that the State party collect and provide in its next periodic report statistics, disaggregated by caste or ethnicity of the victims, on**

investigations, prosecutions, convictions, sanctions and remedies for race or caste-based hate crimes, including acts of hate speech and incitement to hatred.

Reservation and declaration

18. The Committee remains concerned that the State party's reservation to article 4 and its declaration under article 6 are inconsistent with the obligations of States parties under those articles (arts. 2 and 4).

19. **The Committee urges the State party to withdraw its reservation to article 4 and its declaration regarding article 6 of the Convention.**

Access to earthquake relief

20. The Committee is concerned by reports that marginalized castes were disproportionately affected by the 2015 earthquake and are still less likely to receive related aid.

21. **The Committee recommends that the State party urgently take measures to ensure the non-discriminatory provision of disaster recovery assistance to all those in need, including members of marginalized castes in remote areas.**

Indigenous peoples

22. The Committee is concerned by reports that indigenous peoples could not adequately and meaningfully participate in the drafting of the 2015 Constitution, because their representatives were not freely chosen but were instead selected through political parties. The Committee is also concerned that domestic legislation only recognizes 59 out of the 81 indigenous peoples of Nepal. The Committee is further concerned by the absence of laws guaranteeing the rights of indigenous peoples to own, use and develop their traditional lands and resources, and by allegations that these rights have been violated in the context of hydropower, road widening and other development activities that are often accompanied by involuntary displacement. The Committee is seriously concerned by reports of severe harassment of indigenous leaders, including members of the Tharu people, by State agents. The Committee is concerned by the criminalization of cow slaughter, which compromises the rights of indigenous peoples for whom eating beef holds cultural significance (arts. 2 and 5–6).

23. **Recalling its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee recommends that the State party:**

(a) **Ensure that its domestic legislation formally recognizes all indigenous peoples in Nepal;**

(b) **Ensure that the right of indigenous peoples to participate in government bodies under article 42 of the Constitution is effectively respected and that indigenous peoples can freely choose their representatives;**

(c) **Find an adequate negotiated solution to resolve the dispute regarding the rights of indigenous peoples over their traditional lands and natural resources, including by revising its legislation on this issue and taking into account ILO Convention No. 169;**

(d) **Obtain the free, prior and informed consent of indigenous peoples prior to the approval of any project affecting the use and development of their traditional lands and resources;**

(e) **Take all necessary measures, including legislative measures, to guarantee that evictions are carried out in accordance with international standards, and provide remedies and adequate alternative housing to those affected by eviction;**

(f) **Ensure the safety of indigenous peoples who have been subjected to threats, harassment and other arbitrary and violent acts by government agents and/or private individuals; and take measures to prevent and investigate such acts and punish the perpetrators.**

24. **The Committee also invites the State party to repeal laws that criminalize aspects of indigenous cultures, in order to ensure that indigenous peoples (Adivasi/Janajati) can freely exercise their cultural and religious rights.**

Education

25. The Committee is concerned that indigenous peoples and Dalits, especially women, remain underrepresented in higher secondary education and in teaching positions, as revealed by the State party's statistics. It is also concerned by reports that literacy rates among Madheshi of the Terai region and Hill Dalits are far lower than the national average, and that Dalits are underrepresented in educational curricula and face discrimination in schools (arts. 2 and 5).

26. **Taking into account its general recommendations No. 32 (2009) on the meaning and scope of special measures in the Convention, and No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends that, in order to ensure equal and inclusive access to education for all children, the State party:**

(a) **Strengthen special measures to achieve full inclusion of all children belonging to indigenous peoples, Dalits and underrepresented castes, especially women, at all levels of education and in teaching positions, including by providing the necessary human, technical and financial resources;**

(b) **Implement targeted programmes in schools, accompanied by increased funding, to improve literacy rates and combat caste-based discrimination by students and teachers, especially in areas inhabited by indigenous peoples, Dalits and other marginalized castes or ethnic groups;**

(c) **Ensure proportional representation of marginalized castes and ethnic groups in all national educational agencies, councils and committees.**

Trafficking in persons and slavery

27. While welcoming the State party's efforts to combat trafficking and contemporary forms of slavery, the Committee is extremely concerned by reports that over 200,000 individuals in the State party are enslaved, including for purposes of sexual exploitation, forced labour, bonded labour, domestic servitude and forced marriage. The Committee is concerned that, although domestic law prohibits bonded labour practices including *haliya* and *kamaiya*, which disproportionately affect Dalits and other marginalized castes, reports indicate that these practices persist in reality. The Committee is also concerned that, although the State party has introduced measures and allocated funds to resettle and rehabilitate former bonded labourers by providing them with land and/or houses and income-generating skills, reports indicate that such efforts are underfunded. The Committee is further concerned by reports that Adivasi/Janajati represent almost half of trafficking victims; that there are no standard operating procedures for identifying victims of trafficking; that prosecutions for human trafficking decreased significantly in 2016; and that many Nepalese migrant workers encounter deceptive recruitment practices that could lead to trafficking and slavery (arts. 2 and 5–6).

28. **The Committee recommends that the State party:**

(a) **Intensify its efforts to prevent trafficking in persons, slavery, sexual exploitation and forced labour;**

(b) **Implement standard operating procedures for proactively identifying and assisting victims of trafficking and slavery;**

(c) **Strengthen its efforts to eliminate exploitative and deceptive recruitment practices towards migrant workers, and bring those responsible for human trafficking and contemporary forms of slavery to justice;**

(d) **Provide information and advice on safe channels of migration in migration-prone communities;**

(e) **Strengthen its efforts to fund voluntary and sustainable resettlement and rehabilitation of former bonded labourers, including through the provision of affordable and adequate housing and alternative livelihoods;**

(f) **Provide in its next periodic report data, disaggregated by ethnicity or caste, on the number of acts of trafficking and enslavement investigated, prosecuted and sanctioned, and on remedies provided to victims.**

Landlessness

29. The Committee is concerned by reports that landlessness is disproportionately prevalent among Dalits and Adivasi/Janajati, rendering them particularly vulnerable to economic exploitation by landowners. While noting the delegation's statements on land ownership, the Committee is concerned by reports that the landholding ceiling and land redistribution provisions contained in domestic laws have not been implemented, and that a small number of large landlords own most agricultural land to the detriment of local landless individuals, including millions of members of disadvantaged castes (arts. 2 and 5).

30. **The Committee recommends that the State party take all necessary measures, including through the implementation of relevant laws, to eliminate patterns of land distribution that represent de facto discrimination against Dalits and other marginalized castes or ethnic groups.**

Caste-based occupational specialization

31. The Committee is deeply concerned by the way in which caste-based occupational specialization obstructs socioeconomic mobility and assigns members of certain castes to degrading and/or exploitative occupations (arts. 2 and 5).

32. **The Committee recommends that the State party implement measures to ensure and promote occupational mobility for marginalized castes, including through hiring incentives, vocational training and community-based awareness and empowerment programmes.**

Citizenship

33. The Committee is concerned by reports that some government officials are seeking to discourage D..lits from applying for citizenship. The Committee is also concerned by reports that many adult Madheshi of the Terai region whose parents received citizenship by birth before the promulgation of the Constitution of 2015 have been denied citizenship by descent, in violation of article 11 (3) of the Constitution (arts. 2 and 5).

34. **The Committee recommends that the State party ensure: that its laws, regulations and practices contain clear procedures for issuing citizenship certificates without distinction as to caste; that applications for citizenship are registered in a timely manner; that written, reasoned decisions for rejection of such applications are provided within a reasonable time frame; and the availability and accessibility of a complaint mechanism to contest the rejection of applications for citizenship.**

Dalit women

35. The Committee is seriously concerned by reports that sexual and other forms of violence against Dalit women are common and often go unpunished. The Committee is also concerned by reports that, because 40 per cent of Dalits live in poverty, the majority of Dalit girls marry before 15 years of age, putting them at heightened risk of being subjected to sexual and domestic violence and impeding their access to education. The Committee is further concerned by reports of caste disparities in reproductive health and maternal mortality, as Dalit women are far less likely to have access to a skilled birth attendant. The Committee is also concerned by the low level of political representation of Dalit women (arts. 2 and 5–6).

36. **The Committee recommends that the State party:**

(a) Intensify its efforts to eradicate violence against women, including by conducting awareness-raising campaigns, encouraging reporting, investigating all reported cases, prosecuting and sanctioning the perpetrators, and providing protection and remedies to victims;

(b) Effectively operationalize its strategy to end child marriage by 2030, including by establishing related activities, targets, timelines, budgets and data collection methods;

(c) Enforce compulsory, free and good quality primary education throughout the country;

(d) Raise awareness in affected communities about the legal prohibition of child marriage, and about the value of girls, their education, and their ability to pursue economic independence;

(e) Reduce poverty among Dalits, including by providing income-generating skills and training to Dalit youths;

(f) Increase access of Dalit women to skilled birth attendants and proper antenatal care and nutrition;

(g) Increase the level of political participation of Dalit women.

Migrants, refugees and asylum seekers

37. The Committee remains concerned that the State party does not have a formal asylum recognition system to ensure the respect of the principle of non-refoulement, and that, while it has provided temporary shelter on humanitarian grounds to thousands of refugees from Tibet Autonomous Region and Bhutan, it states that it is not in a position to accept any other refugees due to practical considerations. The Committee is also concerned by reports of large numbers of stateless persons in Nepal, and by reports that Tibetan refugees and their children, including those born in Nepal and who have been living in Nepal for decades, are not provided with identity documents and are consequently exposed to fines, detention and deportation for irregular stay, and are unable to obtain an education, open a bank account, obtain a driver's licence and travel (arts. 2 and 5–6).

38. **The Committee again urges the State party (see CERD/C/64/CO/5, para. 19) to ratify international instruments relating to the protection of refugees and adopt national legislation conforming to the standards in those instruments. The Committee further recommends that the State party provide identity documents to refugees in its territory. The State party is also encouraged to accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.**

D. Other recommendations

Ratification of other treaties

39. **Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties that it has not yet ratified, in particular treaties with provisions that have direct relevance to communities that may be subjected to racial discrimination, including the International Convention for the Protection of All Persons from Enforced Disappearance and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.**

Amendment to article 8 of the Convention

40. **The Committee recommends that the State party ratify the amendment to article 8 (6) of the Convention adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111.**

Declaration under article 14 of the Convention

41. **The Committee encourages the State party to make the optional declaration provided for in article 14 of the Convention recognizing the competence of the Committee to receive and consider individual complaints.**

Follow-up to the Durban Declaration and Programme of Action

42. **The Committee takes note of the information the State party provided concerning the measures it has taken to give effect to the Durban Declaration and Programme of Action, adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (2001), and encourages it to continue these efforts and report accordingly.**

International Decade for People of African Descent

43. **In the light of General Assembly resolution 68/237, in which the Assembly proclaimed 2015–2024 the International Decade for People of African Descent, and Assembly resolution 69/16 on the programme of activities for the implementation of the Decade, the Committee requests that the State party include in its next periodic report precise information on the concrete measures adopted in that framework, taking into account its general recommendation No. 34 (2011) on racial discrimination against people of African descent.**

Consultations with civil society

44. **The Committee recommends that the State party continue consulting and increasing its dialogue with civil society organizations working in the area of human rights protection, in particular those working to combat racial discrimination, in connection with the preparation of the next periodic report and in follow-up to the present concluding observations.**

Dissemination of information

45. **The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission and that the concluding observations of the Committee with respect to those reports be similarly publicized in the official and other commonly used languages, as appropriate.**

Common core document

46. **Noting that the State party submitted its common core document in 1994 (HRI/CORE/1/Add.42), the Committee encourages the State party to update its common core document, in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted at the fifth inter-committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN.2/Rev.6, chap. I). In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 42,400 words for such documents.**

Follow-up to the present concluding observations

47. **In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 10 and 21 above.**

Paragraphs of particular importance

48. **The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 12, 23, 28 and 36 above and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement those recommendations.**

Preparation of the next periodic report

49. **The Committee recommends that the State party submit its combined twenty-fourth to twenty-fifth periodic reports, as a single document, by 1 March 2022, taking into account the reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports.**